

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

VAUGHN G., et al.

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Plaintiffs

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v.

* CIVIL ACTION NO. MJG-84-1911

MAYOR and CITY COUNCIL OF
BALTIMORE, et al.

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Defendants

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POST-HEARING MEMORANDUM AND ORDER
RE: CURRENT SCHOOL SYSTEM SITUATION

This Court, by the undersigned judge, has proceeded in active collaboration and coordination with Judge Joseph H.H. Kaplan of the Circuit Court for Baltimore City, presiding over the related case of Bradford v. Maryland State Board of Education, Case No. 9430058/CE 189672 ("Bradford").

I. BACKGROUND

The instant case involves the continuing failure¹ of the Baltimore City Public School System ("BCPSS") to meet its obligations under federal law with regard to students having special educational needs. Bradford involves state law issues relating to the Constitutional adequacy vel non of funding for Baltimore City public schools provided by the State of

¹ Albeit with some commendable improvement, at least until recently, over prior performance.

Maryland. Inasmuch as the adequacy of State provided funding has a direct impact on the ability of the school system to meet its federal obligations, the instant case and Bradford are related by virtue of a substantial overlap of relevant evidence and considerations. Indeed, the actions of Judge Kaplan in Bradford are, in and of themselves, relevant facts in the instant case and it is possible² that Judge Kaplan would find certain of the actions of the undersigned Judge somewhat pertinent to the issues before him.

Pursuant to the Court's Third Procedural Order issued June 29, 2004 [Paper 1400], joint hearings were held in the instant matter and Bradford. Thereafter, on August 26 and 27, 2004, this Court alone conducted supplementary proceedings.

At the time of the aforesaid hearings, there was pending the City Defendants' Motion for Relief from All Judgments, Consent Decrees/Orders, and Remedial Orders and Relinquishment of Court Oversight and Motion for Stay on Implementation of Certain Activities Required by the Implementation Plans for School Years 2002/2003 and 2003/2004 [Paper 1334].³ At the

² Although this Court will not purport to state Judge Kaplan's views, it seems probable that he is taking into account the situation regarding the special education aspect of BCPSS operations.

³ And a related Motion to Lift the Order of Temporary Stay of the said motion [Paper 1372] seeking rescission of an

outset of the supplemental federal hearing session held on August 26, 2004, Counsel for the City Defendants moved to withdraw the aforesaid motion. Accordingly, the Court denied the motion based upon the withdrawal. The hearing continued, however, and the Court received further evidence relating to BCPSS operations and remedial issues.

II. SUMMARY

As set forth above, this Court has heard extensive evidence regarding the current operations of the BCPSS, the status of compliance with the Measurable Outcomes necessary to conclude the instant case, and the prognosis for operations during the current 2004/2005 school year. Moreover, the record in Bradford and the instant case as well as the findings of the Special Master reflect the existence of severe problems regarding the functioning of BCPSS, which, while affecting all students, most profoundly impact students with disabilities and "at-risk" students.

As shall be discussed more fully herein:

1. Despite Judge Kaplan's Order, the State of Maryland persists in inadequately funding the operations of the Baltimore City Public Schools

Order of February 26, 2004 [Paper 1362] that had stayed proceedings regarding the Motion for Relief from All Judgments.

although it is apparent that funds alone, without substantial improvement in school system management together with constructive cooperation between BCPSS and the Maryland State Department of Education ("MSDE"), would not have any real and lasting favorable effect upon the students.

2. BCPSS persists in failing to candidly acknowledge and address its operational shortcomings and the extremity of conditions experienced by students.
3. BCPSS is now in a severe financial crisis that threatens to result in a substantial erosion of the progress that has heretofore been made in meeting its federal obligations.
4. Examples of serious immediate problems include, but are not limited to:
 - a. Personnel cuts that have affected the ability to provide for the physical safety as well as the effective education of the students.
 - b. Increased class sizes, well beyond the limits blandly promised in sworn testimony by school management, that have adversely impacted the education of the children.
 - c. Cutbacks in personnel and programs that have affected the ability to address student attendance and school completion.
 - d. Failures to apply for and/or utilize millions of dollars of potentially available funding.
5. The BCPSS has grossly wasted resources in pursuing baseless litigation positions based upon unrealistic contentions that inflated its own legal costs as well as those of the Plaintiffs for which it was required to pay.

6. The BCPSS has failed to achieve Measurable Outcomes 3,4,7,8,9,11 and 13 in the 2003/2004 school year. There may be a possibility, however, of BCPSS' achievement of Outcome 14. The Court shall review the Special Master's 2003/2004 Compliance Report with regard to this Outcome as soon as the parties have had an opportunity to comment on the Report.
7. The inadequacy of the BCPSS' Human Resources data system and the unreliability of the testimony of management as to class staffing requires external validation of BCPSS' reporting of personnel (particularly teacher) deficiencies. The Special Master shall conduct a preliminary investigation and recommend such further action that may be necessary.
8. There is a compelling need for MSDE to fulfill an institutional supervisory role as well as to provide support for BCPSS.
 - a. It is essential that the students of the BCPSS not be the victims of turf wars and politically motivated dissension between the State and City Governmental leaders.
 - b. The State should work constructively with the Special Master and the BCPSS to seek methods for MSDE to gradually assume some routine school monitoring functions of the Special Master with meaningful and verifiable State actions with an ongoing review⁴ by the Special Master and this Court.

⁴ Such review should include, among other things, sample on-site school monitoring as well as data verification. MSDE's monitoring role would not limit the Special Master's ultimate responsibilities under outstanding Court Orders.

III. DISCUSSION

A. The 2003/2004 Fiscal Debacle

1. The Financial Crisis

When BCPSS' financial books were closed for the 2002/2003 school year, the end of year cumulative deficit stood at \$52 million. This sum was later re-adjusted by BCPSS' auditors to an accumulated deficit of \$58 million. The State forecast in January 2004, that if spending controls were not imposed, this deficit would imminently balloon to \$75 million dollars. See Ex. 35, to Special Master's Outcome 8 Report, filed March 25, 2004; Bradford Ex. 24, Draft Financial Recovery Plan, May 30, 2004, at 9.

In November and December of 2003, the BCPSS Board of Commissioners and its Chief Executive Officer ("CEO") Dr. Bonnie Copeland began to initiate major personnel layoffs and other cost saving program reductions. Approximately eight hundred positions were eliminated, only half of which were administrative posts in the historically bloated central office. Additional layoffs, including layoffs of teachers, were implemented in January 2004. Class sizes⁵ in the

⁵ There is a question whether these size limits are, in reality, averages rather than absolute ceilings - subject only to the rare exception for extraordinary circumstances - as promised by in the testimony of BCPSS' management. This may well provide yet another example of the BCPSS management's

2003/2004 school year were increased by two students in order to reduce teacher personnel costs. The system also planned to implement additional class size increases of two students per class in the 2004/2005 academic year to further reduce personnel costs.⁶ BCPSS Ex. 12; Bradford Ex. 13, 21, 63, 65; Test. of Dr. Bonnie Copeland at 1245-46. Further cost reductions were attained through the school system's cutting contracts, abolishing positions, and freezing hiring for vacant positions. See Test. of Rose Piedmont, Gayle Amos, Bonnie Copeland; Bradford Ex. 13; BCPSS Ex. 24.

By February 2004, the school district faced a critical cash flow crisis. In the absence of a major infusion of cash through a loan, the system would not be able to meet payroll or pay immediately pending bills. The school district initially sought to address its cash flow crisis and deficit by asking the Baltimore Teachers Union to accept one of three proposals - a salary reduction, furloughs, or, alternatively, layoffs of up to twelve hundred teachers. The teachers union rejected all three proposals.

proclivity to make unreliable promises rather than candidly acknowledge problems to a judge, administrative agency or legislature.

⁶ In the absence of State "Thornton" funds in 2004/2005, BCPSS would have been forced to increase class sizes increase by three students. See Test. of Rose Piedmont.

Ultimately, after a chain of negotiations and political maneuvers on the part of both the Governor and the Mayor of Baltimore, the City of Baltimore loaned the school district \$42 million to address immediate cash flow demands. The loan, consummated in a Memorandum of Understanding (also referred to as the "MOU") between the City and Board of School Commissioners, required the school district to repay \$34 million by August 2, 2004 and the remaining \$8 million by June 30, 2006. The MOU also resulted in the City's imposition of more stringent fiscal, management, and substantive program oversight measures over the BCPSS and resulted in the development of a Fiscal Recovery Plan that was constructed solely or primarily based upon fiscal, not educational services, criteria.

Both Senate Bill 894 (enacted in the 2004 legislative session) and the Memorandum of Understanding between the City of Baltimore and the Baltimore City Public School System require the accumulated \$58 million deficit to be eliminated by fiscal year 2006. In Bradford, Judge Kaplan's August 20, 2004 Order held that these provisions violated the Maryland Constitution and should not be enforced. Judge Kaplan Ordered that the current amount of repayment be reduced and that

certain contingency funds be applied to urgent educational needs.

While Judge Kaplan's Order has been appealed, the Maryland Court of Special Appeals has denied the State's Motion to Stay the Circuit Court Order Pending Appeal. Nevertheless, there is no indication that BCPSS or the State intends to comply with Judge Kaplan's Order unless forced to do so. In the interim, the BCPSS has represented, through both its fiscal recovery plan and the top officials' sworn testimony at trial, that the system is committed to retiring at least sixty percent of the \$58 million deficit in the 2004/2005 school year. However, BCPSS hopes to achieve this budget feat through implementation of a reduced teacher staffing model and a strict diet of program cutbacks. Thus, regretfully, in effect the students will pay back - in the form of severe educational setbacks - for the past under-funding and fiscal mismanagement of BCPSS.

In Bradford, Judge Kaplan concluded that the State of Maryland's failure to remedy fully and promptly its under-funding of the Baltimore City Public School System plays a major role in the school system's financial crisis. Judge Kaplan, in finding 137, stated: "The City and State, as well as the BCPSS, bear some responsibility for the BCPSS

management and budget crisis facing the BCPSS.” Judge Kaplan’s Aug. 20, 2004 Order at 31. This Court notes that a variety of audits and documents issued by that the MSDE, Ernst & Young, and the City of Baltimore credibly indicate that BCPSS’ archaic and poorly integrated financial management and personnel systems also were, at least in part, causes of, or associated, with the BCPSS’ extreme cash crunch and fiscal crisis.

This Court finds that BCPSS’ handling of state and federal funding grants and applications through MSDE was deficient. BCPSS did not apply for the full range of funds to which it was potentially entitled from MSDE and failed to secure and expend state and special education federal funds. See Aff. of Carol Ann Baglin. Moreover, mis-administration of a variety of grant programs placed BCPSS in potential jeopardy of losing federal and state funding. For instance, BCPSS was at risk of losing state and federal funds due to its failure to properly document or bill reimbursable Medicaid services. Similarly, BCPSS’ receipt of \$18 million in Title I funds for high poverty schools was placed at risk based upon expenditures for non-eligible schools or services. MSDE has worked with BCPSS to minimize the school system’s loss of funds placed in jeopardy as a result of the imposition of

federal standards and requirements. However, the school district's financial administration of these programs potentially placed millions of dollars in jeopardy.

This pattern of inadequacy in BCPSS' operations raises grave concerns regarding the reliability of the school system's institutional financial processes, as will be discussed further below. While the Court notes that BCPSS and the City presented evidence of some improvements in the school system's fiscal operations since February 2004, these are by no means sufficient to promise a solution to the formidable financial issues confronting BCPSS.

2. Detrimental Effects of the Financial Crisis

The BCPSS' extraordinary financial crisis has caused a variety of adverse educational impacts that are highly relevant to the district's institutional capacity to meet the Ultimate Measurable Outcomes established by the May 4, 2000 Consent Order. In addition to implementing a wide range of personnel cuts, BCPSS failed to fill a variety of critical personnel vacancies as a result of the funding crisis. Although some of the personnel reductions entailed needed trimming of excess central office staff, other personnel cuts and freezes seriously impacted BCPSS' ability to support

progress toward achievement of the Ultimate Measurable Outcomes. In some instances, personnel cuts effectively translated into program cuts that undermined potential institutional mechanisms to support achievement of the Ultimate Measurable Outcomes, as discussed further herein. In this Section, the Court will note some, but by no means all, of the adverse impacts of major personnel and program cuts on students with disabilities in the 2003/2004 and 2004/2005 school years.

a. Delivery of Required Individualized Education Program ("IEP") Services

BCPSS' ability to make progress in the delivery of required IEP services to students in the general education environment has been jeopardized by:

- i. The increase in teacher/student ratios resulting from class size increases by two students both in the 2003/2004 and 2004/2005 school years⁷; and,
- ii The juggling and consolidation of classes at the secondary school level that occurred mid-year in 2003/2004 to address staff re-assignments and

⁷ BCPSS acknowledged that it had executed such class size increases on a system wide basis in 2003/2004 and planned a similar further increase in the 2004/2005 school year. However, BCPSS officials expressly promised the Court that the increased class sizes identified in Bradford Plaintiffs' Exhibit 13 represented the maximum size of any class.

layoffs resulting from the financial crisis.

Larger class sizes and instability in class instruction in the 2003/2004 school year most significantly impacted teachers' capacity to deliver educational services to students at risk, and in particular, students with disabilities. See Test. of Dr. Ross and Dr. McLaughlin. These negative effects would similarly impact BCPSS' efforts to achieve the substantive goals of Outcomes 8 and 9 that call for students with disabilities to receive required IEP services in the least restrictive environment. As noted in Dr. Grasmick's letter of March 31, 2004 to the Maryland General Assembly⁸, disaggregated MSA data "highlights the massive instructional needs of students with disabilities in BCPSS. . . . [A]ny reductions to the regular education programs will impact students with disabilities who are served in these programs." The reductions to educational services in the 2003/2004 school year would be magnified in the 2004/2005 school year when additional increases in class sizes would be imposed by the terms of BCPSS' 2004/2005 budget and fiscal recovery plan.

⁸ Bradford Pl. Ex. 30.

b. Unfilled Special Education Positions

Although BCPSS included forty-four special education department head positions in its budget and staffing plan, only five of these positions were filled in the 2003/2004 school year. See Test. of Gayle Amos. BCPSS originally planned the "department head" positions to address the major deficiencies in secondary schools in IEP delivery and integration of special education and regular education services for students with disabilities included in general education. As discussed at length in the Court's Order on Outcome 8 (July 2, 2004) and the Special Master's Reports in the 2000/2001, 2001/2002 and 2002/2003 school years, these deficiencies are a critical impediment to BCPSS' achievement of substantial compliance with Outcome 8.

Thus, the school district's decision not to proceed with the department head initiative was particularly significant as it had already largely eliminated "academic coaches" at the start of the 2003/2004 school year and then, at mid-year, cut part-time teacher mentors from most schools. The school district had previously presented the academic coach initiative as an effort designed in part to address the challenge of regular educators' delivery of special education services. Special Master's Outcome 8 Report for the 2002/2003

School Year at 21-22. While the Court does not intend to suggest in any way that full staffing of the department head position would address the scope of service delivery deficiencies identified in the Special Master's Outcome 8 Report for the 2002/2003 school year,⁹ the department head "bridge" role clearly represented one of BCPSS' chosen strategies for tackling this problem.

Ironically, MSDE approved BCPSS' 2003/2004 school year application for \$3,100,000 in federal funding for forty-seven special education positions, including these department head positions. However, the school system was unable to utilize this funding based upon its own personnel and recruitment difficulties, cash flow shortage, or overall chaos during the course of the 2003/2004 school year.¹⁰

⁹ Other alternate courses of action, recommended by both the Maryland Higher Education Consortium and the Special Master, include the provision of school embedded extensive professional development for regular and special educators, increased special education teacher and related service staffing of classes, decreased concentrations of students with disabilities in class assignments, and the use of co-teaching. See Special Master's Outcome 8 Report for the 2002/2003 school year and App. A attached thereto (summarizing remedial recommendations of preceding reports).

¹⁰ BCPSS has cited a variety of reasons at different times as the basis for its action. BCPSS has represented that it would be able to obtain approval for carryover of these funds in the 2004/2005 school year for the department head position, and for purposes of this Order, the Court will treat the representation as accurate. In any event, as of the August

c. Student Discipline

Personnel cuts and instability resulting from the financial crisis negatively affected schools' capacity to manage student discipline. The reduction of elementary school counselors and "temporary" school based personnel who previously performed a variety of student and school support roles stripped schools of buffers, supports, and security that might normally partially curtail student disciplinary conduct. While Outcome 7 is solely directed toward BCPSS' compliance with the legal requirements for disciplinary removals under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq., the Court notes the reality that a larger volume of disciplinary incidents predictably imposes greater legal compliance and management challenges on BCPSS' schools as students with disabilities constitute a disproportionate number of the students suspended or expelled. See Test. of Gayle Amos, Dr. Margaret J. McLaughlin, and Dr. Nancy Grasmick; Pl. Ex. 3; Special Master's 2002/2003 school

27, 2004 hearing, only two more department heads had been hired, even though the job qualifications for the position had been altered to permit applicants without any special education background or certification. BCPSS officials, at the August 26th & 27th hearing, also indicated that these positions might only be filled after sufficient staff had been hired to replace employees who would be applying for these positions.

year Outcome 7 Report. Similarly, high suspension rates can be correlated with high dropout rates, that particularly impact students with disabilities. See Test. of Gayle Amos; Dr. Nancy Grasmick; Dr. Margaret J. McLaughlin. An increased trend in suspensions of students with disabilities thus would tend to undermine progress toward BCPSS' achievement of the goals of Outcome 7 (discipline), Outcome 3 (school completion) and Outcome 4 (graduation).

d. Attendance Officer Layoffs

With the layoff of attendance officers, BCPSS schools became even more hamstrung in their efforts to address and remedy chronic student absenteeism directly associated with high dropout rates, and thus impacting the district's ability to make progress towards school completion and graduation (Outcomes 3 and 4). Additionally, central office attendance clerks who performed truancy referral functions were laid off. As many schools had also lost their "temporary" clerical staff who previously had handled attendance monitoring and follow-up, school staff, in turn, were forced to assume these additional referral and clerical responsibilities. Finally, the internal BCPSS' "truancy courts" that operated in a variety of high schools and middle schools were eliminated.

Record evidence in this case establishes that attendance rates of students with disabilities within BCPSS is lower than for general education students. Further, attendance and school completion rates clearly are correlated factors. Test. of Dr. Nancy Grasmick at 270. The Implementation Plan provisions for Outcomes 3, dealing with school completion, contain a variety of attendance related activities. Improved student attendance is therefore clearly relevant to BCPSS' moving toward substantial achievement of Outcome 3's modest goal for an increase in school completion by students with disabilities and Outcome 4's modest graduation goal. Accordingly, the personnel and program cutbacks that occurred in the 2003/2004 school year undercut progress toward meeting Outcomes 3 and 4.¹¹ No evidence was introduced at trial that would suggest that BCPSS would rescind these cutbacks in the 2004/2005 school year.

¹¹ The school system's elimination of systemic summer school programs for at-risk children in elementary and middle school and application of a \$150 fee per course for high school students similarly undercut the system's efforts toward achievement of Outcomes 3 and 4. While this summer school cost saving decision was directed at all students, it had the most serious impact on the education of at-risk students, including students with disabilities, who are far more prone to have fallen behind during the course of the academic school year and in turn, drop-out. See Test. of Dr. Ross and Dr. McLaughlin. Summer school previously had constituted one of the school district's chosen institutional mechanisms for keeping students' enrolled and progressing in school.

IV. INSTITUTIONAL MECHANISMS AND ISSUES

The Consent Order of May 4, 2000 provides that for all "substantial compliance" as opposed to strict compliance Outcomes, the Court must determine substantial compliance based on three factors:

- a. Progress toward the Outcome;
- b. Assessment of effectiveness of the institutional mechanisms for meeting and maintaining the outcome; and
- b. Student achievement.

Pursuant to the May 4, 2000 Consent Order, as amended by the Consent Order of July 28, 2003, Outcomes 3, 4, 7, 8, 9, 11, and 13 were substantial compliance Outcomes in the 2003/2004 school year. To date, only Outcomes 14 and 15 remain strict compliance Outcomes. The City Defendants' Compliance Statements for the 2003/2004 school year admit that the school district achieved only partial compliance with Outcomes 3, 4, 7, 8, and 11 during the 2003/2004 school year. In light of both the compliance and remedial issues posed by this case, the Court deems it appropriate to review here the evidence adduced at the July and August hearings that relate to the question of the efficacy of BCPSS' institutional processes.

A. Fiscal Management/Mismanagement

BCPSS' fiscal management and resources bear directly on the district's ability to continue to make progress and to maintain effective institutional processes to support delivery of services for students with disabilities and assure legal compliance with IDEA and this Court's Orders. As discussed above, the evidence establishes that BCPSS experienced major problems because of funding shortages and the system's failure properly to utilize and manage funds actually in its possession and alternatively, to access funds potentially available to it. Ernst & Young's February 10, 2004 report gave a broad critique of the school district's financial and managerial operations. The report identified a pattern of dysfunction and fragmentation within the school district's financial, human resources, information technology, and management systems that critically impacted the school system's overall financial and program operation. See Ex. 3 to MSDE Pre-Trial Mem.

Of course, the new chief executive and fiscal officers appointed in the 2003/2004 school year are not responsible for previous fiscal mismanagement within the district. Nevertheless, they assumed responsibility for the system and have a duty to address the system's fiscal problems and

realistically and candidly to report and, when under oath, to testify about such matters. The testimony of BCPSS' management was marked by a disturbing bureaucratic glossing over of the serious continuing institutional management issues presented by the evidence.

By the summer of 2004, the new school system leadership team had developed a variety of plans and new procedures in response to the Ernst & Young Report and Recommendations. However, the actual implementation of these plans and major institutional change remained a formidable challenge for the district. Institutional fragmentation and capacity problems identified in the Special Master's prior reports as well as in the Ernst & Young Report were overtly manifested in the evidence presented to the Court. This discussion includes, by way of illustration, some of the more glaring examples of these issues, as they relate to the system's functioning.

1. Third Party Billing

The Interagency Medicaid Monitoring Team completed a condensed audit of BCPSS' third party billing practices in June 2004.¹² See MSDE Ex. 22. The BCPSS' third party billing

¹² The report was prepared based upon an audit initiated in April 2004 by the Interagency Medicaid Monitoring Team which includes representatives of MSDE, the Department of

unit obtains reimbursement through Medicaid for the school system's provision of related services (e.g., psychological counseling) to students with disabilities. This unit falls within the CFO's supervision, although it also relates directly to the operations of special education and student support service staff. Nevertheless, the CFO testified at trial on July 20, 2004 she was totally unaware of the critical June 17, 2004 State audit report regarding third party billing practices, even though an adverse audit potentially could affect the district's full receipt of Medicaid reimbursement funds.¹³ Test. of Rose Piedmont at 147-48; MSDE Ex. 22. Ms. Amos, the top management official responsible for student support and special education services, similarly testified that she had no knowledge of the results of the State's audit. Test. of Gayle Amos at 1046. On the other hand, Dr. Copeland, BCPSS' CEO, testified that she first learned of the audit findings from the CFO on July 7, 2004, more than two weeks

Health and Mental Hygiene, and BCPSS.

¹³ In addition to making findings as to documentation that did not support Medicaid billing submitted, the Report found that the effectiveness of required BCPSS self-monitoring had been "greatly compromised due to the loss of one half of the third party billing staff, and special education lost all but one of its direct service coordinators." MSDE Ex. 22 at 2.

after issuance of the MSDE report. Test. of Bonnie Copeland at 1239.

Putting aside, for the present, serious questions as to the veracity of Dr. Copeland's and Ms. Piedmont's testimony on this issue, the Court notes that the communication between management staff on issues of vital fiscal and programmatic concern continued to suffer from clogged bureaucratic arteries.

2. Failure to Obtain Available Funds

The district's fragmented approach to institutional fiscal management affecting the delivery and funding of special education services is illustrated by the district's decision to forego \$3.1 million in IDEA grant funds allocated for the 2003/2004 school year.

Ms. Amos testified that the school district determined as a strategic matter not to use the \$3.1 million allocated for material resources in the 2003/2004 school year as she now wanted to spend this large sum of money on personnel rather than materials because staff resources had been cut to the bare bone - "we needed the people." Test. of Gayle Amos at 1059. However, Ms. Amos apparently determined it would be pointless to amend the grant application to request approval

for expenditures on personnel to address the staffing gaps and educational duress caused by cutbacks because the school system spending freeze precluded any hiring or additional expenditures on contractual services. Id. at 1060-61. Thus, BCPSS ultimately ignored or bypassed any possibility of accessing approved IDEA grant funds to address the staff support deficiencies for special education students faced during this period of fiscal crisis in the past school year.¹⁴ The Court recognizes that administrators should have latitude to exercise discretion in regard to the use of grant funds. Nevertheless, the Court finds unreasonable the BCPSS' decision to reject any option to collaborate with MSDE to pursue an amended application to authorize use of federal funds to address critical staff and support needs during a period of financial crisis.

3. Undermining of Education for Students

Most significantly, BCPSS' management witnesses were adamant in testifying that the school system's ambitious deficit reduction plan would not undermine student instruction and progress during the 2004/2005 school year toward meeting

¹⁴ Ms. Amos stated that she would instead seek MSDE approval to carry over the funds to the 2004/2005 school year.

the Ultimate Measurable Outcomes as well as student achievement goals. In particular, both the CEO and CFO swore before this Court that no class would exceed the class limits identified in Exhibit 13 and that the identified class sizes were absolute "caps," not averages. Test. of Bonnie Copeland at 1245-1246; Test. of Rose Piedmont at 106-107. In sum, BCPSS management gave sworn testimony that the budget retrenchment would not be handled in a manner so as cause major changes in teaching load and class sizes. It cannot be seriously contended, even by BCPSS management, that this has proven to be the case.

The Court will not require BCPSS to devote the resource for a hearing, at the present time, with regard to the serious failures of BCPSS in its educational mission in the current school year. The situation approaches, if not reaches, the point at which the Court could take judicial notice that the school system, as an education provider, is in extremis. Consistent reports in the media since the opening of school in September 2004 report that classes are exceeding these numbers and that some high school classes are as large as forty to forty-five students in size. There were regular media reports of pervasive disruption of zone high schools this past fall as a result of fires being set in schools with insufficient staff

to provide building security or student support and instruction

While the Court will not make findings based upon media reports, it suffices for the present to note major concerns both as to the accuracy and veracity of the testimony on class size and the reliability of top administrators' assessments of the impact and scope of the budget cutting measures they have implemented. As will be discussed herein, the Court shall ask the Special Master to provide an interim report that addresses some of these issues.

B. Personnel and Related Management Issues

1. The Human Resources ("HR") Module and Reliable Personnel Vacancy Data

The Court's has previously issued Orders that addressed the relationship between a reliable, functional automated human resources system and the problem of interruptions in special education services.¹⁵ The Human Resources Management System ("HRMS")¹⁶ directly impacts the school district's

¹⁵ See, Court Order of July 28, 2000 at 16-18 and Special Master's Report of February 2000 at 36-39; Consent Order of July 25, 2001; and, Mem. and Order of Special Master re Dispute as to Tracking of Interruptions in Service issued July 10, 2002.

¹⁶ Mr. Boden testified that the HRMS is a computerized system for personnel tracking and payroll.

ability to accurately forecast its personnel needs and costs.

As noted in the Ernst & Young Report:

The new HR system has implementation issues and will not resolve as many issues as expected

Poorly designed business processes around the HR module of HRMS lead to significant data integrity issues.

MSDE Pre-Trial Mem., Ex. 3 at 7, 34.

In the absence of up-to-date, reliable information regarding teacher and staff vacancies, the school system is impaired in its capacity, among other things, to identify staff vacancies that may result in non-delivery of required IEP services to students with disabilities, causing interruptions in services, or deficient delivery of instructional services. In this regard, the Court notes that it has previously adopted findings that BCPSS' staffing levels were insufficient to support regular educators' delivery of special education in inclusive environments. See Special Master's Outcome 8 Report for the 2001/2002 School Year, and 2002/2003 School Year.

At the July 20, 2004 hearing, the new Director of Personnel first testified that the personnel portion of the HRMS had been operative since July 1, 2003. See Test. of

William Boden at 278. Subsequently, Mr. Boden explained that as the HRMS could not produce accurate personnel vacancy information during the 2003/2004 school year, the personnel staff had to individually interview principals in order to assemble a profile of the school district's personnel vacancies and recruitment needs and that this was not done until the months immediately preceding the July hearings.

Mr. Boden's testimony revealed that during the 2003/2004 school year, the school district was unable to track either system-wide vacancies and positions or "vacancies" that had been abolished. Test. of William Boden at 433-435; Vaughn G. Pls. Ex. 6. This incapacity meant that BCPSS also could not reliably advise the Court of the scope of the impact of the hiring freeze in the 2003/2004 school year and whether "abolished" vacancies, in fact, resulted in staff shortages at schools in excess of what BCPSS officials projected. Indeed, any vacancies that were "abolished" by virtue of Dr. Copeland's hiring freeze directive in the 2003/2004 school year were not included in the personnel department's manual "count" of positions and vacancies to be filled in either the 2003/2004 or 2004/2005 school years. Test. of William Boden at 65-66. These overall personnel circumstances obviously did impact BCPSS' capacity to marshal its resources to support

achievement of the Ultimate Measurable Outcomes at the school site during the 2003/2004 school year and may well have a continuing impact.

In his testimony, Mr. Boden promised the Court that the HRMS would be capable of generating an accurate personnel and vacancy report by the end of July, 2004. Test. of William Boden at 433. The Court's Order of July 26, 2004 required the filing of such a report along with an affidavit from Mr. Boden. However, Mr. Boden's affidavit of August 2, 2004 stated that the HR system still could not produce an accurate automated vacancy and personnel report.

Thus the promised HRMS capacity continued to be unavailable directly before the opening of school, when the Court held its supplemental hearing on August 26 and 27, 2004. Mr. Boden, at that time, thought (perhaps "hoped" is a better word) that he would be able to produce an "audited" or verified automated personnel report by September 3, 2004. Test. of William Boden at 54, 65-67. Finally, on October 22, 2004, BCPSS filed a Second Status Report on personnel issues, representing that the HRMS position control function was fully operational. The Report included a summary data report on vacancies.

The Court finds that external validation of the HR system's data accuracy and functionality, as well as BCPSS' projections of staffing per school, is necessary by virtue of such facts as:

1. The prior absence of a reliable BCPSS personnel data base;
2. The strong admonitions contained in the Ernst & Young Report concerning the HR module;
3. The conflict between the CEO's and CFO's representations as to class sizes (per teacher) and apparent reality; and
4. The Court's prior experience with the Special Education Tracking System ("SETS").

The Special Master shall, therefore, be directed to conduct a preliminary examination of data accuracy, system functionality and projections of school staffing, including class size and staffing ratios, and report to the Court no later than February 11, 2005. The Court will, thereafter, determine what additional steps, if any, are appropriate.

2. Integration of Special and Regular Education

In reviewing the Special Master's Reports on Outcome 8, the Court in consecutive years adopted findings and recommendations that greater integration of regular and special educators was an essential step to ensure delivery of

students' required IEPs in the general education classroom. This integration entailed the need to provide further school based professional development for regular educators as well as other measures that would improve collaboration between regular and special educators. See Special Master's Reports on Outcome 8 and 9 for the school years 2000/2001, 2001/2002, and 2002/2003; Implementation Plans for 2000/2001 - 2003/04 school years (adopted by the respective Court Orders).

MSDE reached similar conclusions through the BCPSS audit it performed between December 2003 and 2004 as part of its Enhanced Monitoring for Continuous Improvement for Results (EMCIR) process. MSDE issued its EMCIR report in June 2005. See MSDE Ex. 7, 25; Test. of Gayle Amos at 1069. MSDE's review of the school district's capacity to implement the IDEA's legally required Least Restrictive Environment provisions¹⁷ identified staff's "general lack of understanding of the principles driving LRE determination" and that "[g]eneral educators have little knowledge about the special education processes, procedures, and interventions or training or how to successfully integrate students with disabilities in to the general education classroom." MSDE Ex. 7, 25.

¹⁷ 20 U.S.C. § 1412(a)(5); 34 C.F.R § 104.34. See also, Federal Register, Vol. 64, No. 48 at 12637 (March 12, 1999).

The BCPSS' CEO, Dr. Copeland, testified that she recognized that these training and staffing issues were significant impediments. However, she stated that she was unable to speak regarding how any of the school district's restructuring or corrective plans¹⁸ specifically addressed these issues and instead, deferred to Ms. Chinnia, the Chief Academic Officer, and Ms. Amos, the Special Education and Student Support Services Officer. Test. of Dr. Bonnie Copeland at 189-195, 251. Dr. Copeland similarly testified that she had no knowledge of how or if the BCPSS had utilized additional resources to address staffing shortages and resources affecting delivery of special education in regular education classrooms, identified in the Court's prior Order. Id. at 254-255. Dr. Copeland stated that she would have to defer to Ms. Amos on this issue as well.

Ms. Chinnia in turn testified that she had not reviewed MSDE's Enhanced Monitoring Compliance Report in any detail and

¹⁸ BCPSS is required to submit an annual master plan to MSDE as a condition of receipt of funding. The system was additionally required to submit substantive school restructuring plans to MSDE for all schools classified by the state as persistently failing under No Child Left Behind. Finally, as a result of MSDE's EMCIR audit, BCPSS was required to submit a corrective action plan to address the scope of special and regular education compliance and performance issues as well as record deficiencies and compliance issues identified in the audit report.

had not been involved in the development or discussions surrounding the MSDE corrective action plan for special education students. Test. of Linda Chinnia at 109-109, 123. Indeed, Ms. Chinnia had no knowledge that a significant number of MSDE's findings in its EMCIR report related to regular education and its relationship to special education. Id. at 123. When asked how the school restructuring plans prepared for MSDE addressed the specific challenges affecting special education students, Ms. Chinnia had no answer other than to state that students with disabilities were among the sub-groups who would be included in the strategies devised by the plans. She also suggested that a school's individual "school improvement plan" might be the source of a more detailed plan. Id. at 106-127.

The evidence therefore demonstrated that although Ms. Amos exercised no supervisory authority over regular educators or their training, she would be the only one actually deemed responsible for the education of students with disabilities in the general education classroom. Yet, as Dr. Grasmick testified in the August 27, 2004 supplemental hearing:

If you integrate those students in regular education classes and teachers are not aware of strategies to work with those students to help them process content . . . you can keep talking about giving professional development to special education

teachers. It is not going to positively impact those students.

Test. of Dr. Nancy Grasmick at 306.

The testimony of BCPSS' management officials regarding implementation of the overall remedial planning process that would address the needs of special education students, in fact, was consistent with Dr. Grasmick's testimony¹⁹ characterizing the systemic "silos" that pervade critical BCPSS management operations. Dr. Grasmick discussed how this "silo" form of management adversely impacts BCPSS students with disabilities, and implicitly, achievement of the goals set forth by the Ultimate Measurable Outcomes:

There is a fundamental problem in the system ... and that this is a system of silos . . . We have finance people who don't know what is happening with the academic situation . The academic people don't know what is happening in special education . . . So it's a system of silos where there is not the interface, and I believe it has existed for an extended period of time and that is a fundamental problem in the functioning of this system.²⁰

¹⁹ Dr. Grasmick testified in her capacity as Superintendent of the State Department of Education as well as an expert witness in the field of education.

²⁰ The City and BCPSS presented evidence that the City had implemented team management measures and a "School Stat" process designed to bring focused fiscal management to the school district. While these measures may in fact have helped to ensure that BCPSS stopped hemorrhaging money in the 2003/2004 school year and placed the system on a more responsible fiscal governance track, they do not seem to have

Test. of Dr. Nancy Grasmick at 1451-52.

Dr. Grasmick explained, more specifically, at the August 27, 2004 hearing the impact, in her view, of the system's failure to properly integrate special and regular education:

If there is not a system in each school of measuring attendance and looking at those students as a cohort of that whole school and attendance, and ascertaining why those students with special needs in that particular school don't come to school - because they are ill, because they have behavioral offenses, because they do not feel that they are accepted in that school or that they are not processing what is happening in the classroom? . . .

. . . If you don't get students with special needs to school and they don't have a full school day or full school week, you know the Court has said, and legitimately, those children are entitled to an education, you have to provide compensatory services. . . So you could say oh well, that's a transportation issue, but it's really about the education of the children who have to be transported to that school and who may have to take, receive a secondary consideration of compensatory services which is not nearly, in my opinion, as powerful, although fair, to given them something as that child coming to school every day.

. . . If you do not address this feeling of frustration as children are placed in regular school environments, and that's where the federal government is telling us that most of our students need to be placed, and that student does not feel, he or she, is profiting or even accepted by that classroom teacher, I think there is a clear correlation between that and children dropping out of school, because they feel it's hopeless. So the professional development that you do with those teachers can't be looked at as separate from the issues around special education.

affected the overarching issues of fragmentation addressed by Dr. Grasmick.

Your hiring practices, you say well, that's personnel, that's human resources, it's not significant. But if you don't have the right people in those classrooms or in those support positions, you negatively affect the student for any kind of academic success.

Test. of Dr. Nancy Grasmick at 306-308.

The issues covered in Dr. Grasmick's testimony - the regular educator's delivery of special education services, interruptions in IEP services, attendance, and school completion - are central to the school district's difficulties in implementing the institutional mechanisms and process that would support substantial achievement of Outcomes 3, 4, 8, 9, and 11. The Court finds that Grasmick's assessment in this regard is fully supported by the evidence presented to the Court during the course of six days of hearing as well as based upon its review of the BCPSS Compliance Statements for the 2003/2004 school year and the Special Master's reports over the past four years.

While BCPSS has made some substantive progress in its implementation of special education legal mandates, as recognized in the Special Master's reports and the Court's release of BCPSS from five primarily procedural Outcomes, the Court cannot conclude that the school system's overall

"institutional mechanisms for meeting and maintaining the Outcomes" are effective.

3. Certification Status of Special Education Personnel

In the spring of the 2003/2004 school year, the BCPSS identified one hundred and twenty-three special education teachers with lapsed special education teaching certificates. Test. of Gayle Amos at 792. Thirty special education teachers with lapsed certificates were recommended for termination from employment as their certification had lapsed for a significant number of years and many others' certificates had lapsed for several years.²¹ Id. at 793, 907-08. Principals maintained the discretion to hire the thirty terminated special education teachers as short term substitutes. Id. at 794. The BCPSS retained ninety-three special education teachers with lapsed certificates, Id., although most of these teachers had additional credit hours to earn prior to becoming eligible for certification. Id. at 711-12. See also, Ex. 8, 17, 19. The

²¹ One teacher's special education certification had expired in 1989. Many others had expired in, and around, 1997. See Test. of Gayle Amos at 908-909. Ms. Amos testified that this was the first time that she had ever reviewed the special education teachers' certification status but that personnel had previously performed this review. She did not address the issue of whether personnel had previously brought this qualification matter to her attention.

school system continued to employ these teachers, even if not properly certified, based upon special education teacher shortages and BCPSS management's expectation or hope that the teachers would pass the required teachers' examination (Praxis I and II) and obtain the required additional course work within the next school year, by September, 2005. Id. at 911-12.

While the Court recognizes that there is a shortage of certified or qualified special education teachers on a national basis, and that recruitment may pose ongoing problems for the system, the school district's inadequate attention to the problem of lapsed certificates until spring of 2004 is no less than shocking.²²

In light of the testimony concerning lapsed teacher certificates and BCPSS' difficulty in recruiting qualified special education staff, the Court finds BCPSS' failure to take advantage of the opportunity to participate fully in education and certification programs extended by MSDE to be inexplicable. BCPSS failed to or was unable to recruit eligible personnel to participate in MSDE's Resident Teacher Program designed to assist non-educators to obtain

²² The Court notes, however, that the current Director of Personnel, hired on a contract basis, did not start work with the district until 2004.

certification in special education. Test. of Gayle Amos at 824-25.

In a sadly typical failure of coordination, the Student Services program office did not participate with the human resources office in recruitment of participants in the Resident Teacher Program. Id. at 826-27.

V. BCPSS DATA ISSUES; MSDE MONITORING AND CORRECTIVE ACTION PROCESS

A. Monitoring and Data Issues

As noted above, MSDE increased its monitoring and oversight of special education and related services at BCPSS through implementation of an enhanced compliance monitoring process ("EMCIR") beginning in December 2003. A major part of the EMCIR related to a review of the records of 1,553 students with disabilities (age 14 or older) to verify student graduation, dropout, and exit information reported by BCPSS to the MSDE. See Ex. 7, 25.

The Special Master's Reports on Outcomes 3, 4, and 13 since 2000 have raised significant data accuracy issues regarding BCPSS school completion, graduation, and exit data. In the 2003/2004 school year, the Special Master additionally reported that MSDE had published inaccurate BCPSS' graduation

and exit data and had undertaken measures to determine the correct data. The MSDE exit audit similarly found a significant range of deficiencies and data inaccuracy in BCPSS' "regular education" "cumulative" records (maintained by the schools in the regular course of operation) of students with disabilities. These results are summarized in the affidavit of Dr. Carol Ann Baglin, Assistant Superintendent for Special Education/Early Intervention Services for MSDE. See State Ex. 7 at 9-10:

The EMCIR results . . . identify general education systemic problems that negatively impact the provision of special and related services. While elementary school cumulative records were generally well ordered, middle school and high school cumulative records were missing or incomplete. These missing or incomplete records in the middle and high school interfere with the verification of students' standardized assessment scores, disciplinary histories, accurate student attendance, and verification of graduation and certificate requirements. Due to these incomplete cumulative records, the students' status could not be accurately determined concerning attendance or disciplinary actions.

The gross problems of inaccurate data in the student exit files include a broad pattern of inaccurate dropout, school completion, transfer, and other exit data. The audit reports system-wide data of inappropriate dismissal of students from special education or exit actions that could not be validated based upon an absence of documentation. State Ex. 25 at 53-

65. As specified in the EMCIR Report, "MSDE found IEPs for 257 students that indicated they were either dismissed or exited from special education due to non-attendance."²³ See State Ex. 25 at 61. Yet attendance is not a legally permissible basis for determining that a student no longer requires special education services and withdrawing services. As specified in the Special Master's Outcome 3 Report for the 2002/2003 school year²⁴, adopted by the Court's Order of Aug. 19, 2004 [Paper 1433], "[T]his practice is in violation of the provisions of the IDEA and Maryland law. See, 34 C.F.R. § 300.534(c)(1) and COMAR § 13A.05.01. Additionally, a central purpose of the exit meeting provisions of Outcome 13 is to ensure that students are properly exited from special education prior to dropping out," as Outcome 13 specifically requires that an IEP meeting be held in conjunction with any student dropping out.

The exit data and dismissal issues raised by the MSDE audit

²³ In other words, these 257 students, dismissed from special education for non-attendance, in reality, may well be deemed "dropouts." The Special Master first raised questions regarding this practice of dismissing students from special education for non-attendance in her Outcome 3 Report for the 2001/2002 school year.

²⁴ Special Master's Outcome 3 Report for the 2002/2003 School Year at 3, fn. 7.

are so significant that the Court cannot reach a finding that BCPSS achieved "substantial compliance" with Outcome 13 in the 2003/2004 school year in the absence of evidence that these issues have been addressed. See Court's June 30, 2004 Mem. of the Court (issuing an Order, nunc pro tunc to April 19, 2004, directing that the Special Master cannot determine compliance with an Outcome unless the data underlying the determination is reliable.). The MSDE EMCIR audit makes abundantly clear that BCPSS' data regarding which special education students in fact have dropped out can not yet be relied upon. Although the exit data reported on by the EMCIR report comes from the 2002/2003 school year, the MSDE has indicated that the next round of comprehensive EMCIR audits will not be presented until later this school year.

Inasmuch as Outcome 13 has become a "substantial compliance" Outcome as a result of the July 28, 2003 Consent Order, the Court will address the institutional processes the BCPSS has adopted to address this problem at the conclusion of the 2004/2005 school year.

MSDE found that the individual student special education files were "generally well organized and complete" even though individual student files were occasionally missing or unavailable. Aff. of Carol Ann Baglin. The Court duly notes

the improvement of the record keeping maintained by special educators. However, the overarching issues presented by the deficiencies in the school districts' record-keeping significantly impact students with disabilities because these students experience higher rates of discipline, non-attendance, and dropping out than regular education students within BCPSS. Accurate data is needed to ensure appropriate intervention, compliance, and monitoring for improvement.

BCPSS has not yet advised the Court of what (if any) comprehensive course of action it will take to address the overall record and data issues identified by MSDE. The Court recognizes that the school district has taken some steps to monitor and improve the accuracy of school discipline data as well as legal compliance with IDEA's student discipline provisions, pursuant to the Court's remedial orders. In addition to a variety of measures identified in the Special Master's Outcome 7 Report for the 2002/2003 school year and the BCPSS Outcome 7 Compliance Statement for the 2003/2004 school year, the BCPSS implemented in 2004 an accuracy audit of school special education discipline data and record keeping of students with disabilities.²⁵ BCPSS 2003/2004 Compliance

²⁵ The audit appears to have been far more complete than a prior one conducted by BCPSS that was discussed in the

Report for Outcome 7, Ex. E; Special Master's Outcome 7 Report for the 2002/2003 School Year. The audit identified a range of deficiencies relating to accurate recording of student discipline, exclusion, and return to school as well as schools' actual compliance with legal requirements for handling the discipline of students with disabilities.

In the past four years, the Court has adopted a series of extremely critical findings regarding BCPSS' non-compliance with the legal mandates of discipline under IDEA pursuant to Outcome 7. Accordingly, the Court takes positive note of BCPSS' implementation of a candid self-monitoring process relative to the accuracy of student discipline data. The Court further notes that MSDE's shadowing of this audit process may have contributed to the validity of the process. BCPSS 2003/2004 Compliance Report for Outcome 7, Ex. E at 6.

B. MSDE'S State Supervisory Role and Monitoring

MSDE originally supported the City Defendants' Motion for Relief from All Judgments and represented to the Court that it could assume full responsibility for monitoring BCPSS to ensure legal compliance and achievement of the objectives of the Ultimate Measurable Outcomes. State Defs.' Mem. in

Special Master's 2002/2003 Outcome 7 Report.

Support of City Def. Mot. for Relief from all J., Consent Decrees/Orders and Remedial Orders and Relinquishment of Court Oversight and for Mot. for Stay on Implementation of Certain Activities for Required by the Implementation Plans for School Years 2001/2001 and 2002/2003 [Paper 1339]. However, the evidence presented to the Court in the instant hearings demonstrates the difficulties inherent in the Court's relying exclusively on MSDE as a substitute enforcement entity in the context of this case.

MSDE appears to have taken a far more active and critical role in monitoring and sanctioning BCPSS as a result of implementation of the EMCIR process, exercise of its supervisory role under No Child Left Behind, and the adversarial proceedings in Bradford. MSDE's main compliance "club" consists of its authority to withhold federal or state funds from BCPSS. However, as evidenced in the saga of MSDE's withholding of Title I funds at the conclusion of the 2003/2004 school year, the imposition of this sanction would be destructive, triggering public uproar. Withholding millions of dollars of funds entails a vicious cycle that MSDE clearly recognizes and therefore historically has avoided. The absence of funds causes further programmatic delivery problems and students' loss of needed educational services.

On the other hand, MSDE's failure to withhold funds effectively "enables" BCPSS to continue its violation of federal and state legal requirements relating to conditions for funding or the legal rights of students.

In this context, MSDE's remedial actions are inevitably constrained by a variety of political, fiscal, bureaucratic, legal, and educational dynamics. MSDE's supervisory remedial role as well as BCPSS' response have been rendered even more complex as a result of the City leadership's new level of aggressive involvement with operational management of the school district.

MSDE required the development and implementation of a Corrective Action Plan to address the deficiencies identified in the MSDE EMCIR audit. During the summer of the Court's hearings, MSDE and BCPSS special education management staff experienced a breakdown in communication regarding the development of this Plan. Lead management representatives for both entities clearly began to talk at cross-purposes at some juncture. Additionally, based upon specific directives from the federal Office of Special Education Programs (OSEP), MSDE suddenly in August was required to narrow both the time span for completion of the Plan's compliance activities as well as the scope of the Plan's corrective actions. The tenor and

substance of the parties "on the record" discussions of the Corrective Action Plan before the Court strongly suggest that the special education corrective process had at the time of the hearing been beset with conflict, misunderstanding, and OSEP's changing dictates.

It appears that a regretful counterproductive pattern has developed. The more MSDE takes a rigorous approach to performance of its state monitoring and supervisory duties, the more BCPSS may view itself as unfairly attacked, particularly in light of the major financial resource challenges it faces and the State's current level of funding of the system. On the other hand, the less rigorous approach taken by MSDE, the less incentive there is for BCPSS to improve its performance.

In sum, the Court cannot - for the present - rely on MSDE's monitoring and corrective action process as an adequate complete substitute for this Court's exercise of jurisdiction and remedial powers or the Special Master's specialized monitoring and remedial role. On the other hand, the Court finds that MSDE's exercise of a strong monitoring role and development of a working relationship between MSDE and BCPSS is essential. MSDE is properly focused in its monitoring and supervision on important issues affecting BCPSS' overall

educational performance and institutional operation as well as its compliance with IDEA's procedural and substantive mandates.

The Court also recognizes that BCPSS' staff have manifested their personal dedication in the face of extremely difficult and onerous circumstances experienced by the school district. However, if BCPSS cannot, or refuses to, utilize MSDE's assistance and guidance to productively implement a remedial process that addresses the substantive problems underlying the remaining issues in this case, the Court will be compelled to assume a more active remedial role. BCPSS' constant generation of general education systemic plans that fail specifically to address the needs of students with disabilities or alternatively, generation of plans that are handled and read only by special education personnel, cannot be an effective answer to the challenges facing the Baltimore City Schools. Nor will the Court tolerate anything but candor and the unvarnished truth regarding conditions in the classroom and schools.

VI. CONCLUSION

For the foregoing reasons:

1. The Court holds that Outcomes 3, 4, 7, 8, 9, 11, 13, and 15 have not yet been achieved.²⁶
2. The Court shall retain jurisdiction over Outcomes 3, 4, 7, 8, 9, 11, 13, and 15.
3. The Defendants shall implement and comply with the Court's outstanding remedial Orders adopting the Special Master's Reports for the 2002/2003 school year as well as the remedial measures specified in the Consent Order Re Implementation Plan for the 2004/2005 School Year [Paper 1456] (November 8, 2004).
4. Until such time as the Court reviews the Special Master's Outcome 14 report and makes a finding of compliance, the Court shall retain jurisdiction over Outcome 14.²⁷
5. The Special Master shall provide the Court with a preliminary report on personnel and class size and staffing issues, consistent with the discussion herein by February 11, 2005.
6. The Special Master shall work with the parties to seek methods for MSDE to perform school monitoring functions with meaningful and

²⁶ BCPSS admits in its Compliance Statements that it has not reached the requisite substantial compliance with Outcomes 3, 4, 7, 8, and 11 or full compliance with Outcome 15. See City Defs.' Compliance Statements, Aug. 13, 2004. The Court's findings as to Outcome 9, which Defendants contend was achieved, are based upon the Court's assessment of evidence relevant to a "substantial compliance" finding, as discussed herein. The Court's findings as to Outcome 13, are based upon the data accuracy issues discussed herein.

²⁷ The City Defendants' Compliance Statements assert compliance with Outcome 14. See City Defs.' Compliance Statements, Aug. 13, 2004.

verifiable State actions with ongoing review by the Special Master and this Court.

- a. The Court expects the parties to work constructively with each other and the Special Master.
- b. The Special Master may narrow the scope of her monitoring activity based upon her assessment of the sufficiency and/or comprehensiveness of the State monitoring and supervision.

- 7. Counsel shall provide a copy of this document to the executive officers and board of the Baltimore City Public School System and the Maryland State Department of Education and State Board of Education.

SO ORDERED, this the 17th day of December 2004.

_____/ s /_____
Marvin J. Garbis
United States District Judge